



20120214000055270 1/6 \$35.00
Shelby Cnty Judge of Probate, AL
02/14/2012 02:03:27 PM FILED/CERT



ELECTRONICALLY FILED
2/13/2012 2:02 PM
CV-2011-900978.00
CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA
MARY HARRIS, CLERK

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

FIRST FINANCIAL BANK,

Plaintiff,

v.

FANNIE MAE A/K/A FEDERAL
NATIONAL MORTGAGE
ASSOCIATION,

Defendant,

CASE NO. CV 2011-900978

ORDER

THIS MATTER comes before the Court on the Motion for Default and for judgment by the Court, pursuant to Rule 55 A.R.C.P., filed by the Plaintiff January 27, 2012. It appears to the satisfaction of the Court that:

1. The Defendant, Fannie Mae a/k/a Federal National Mortgage Association, was served by Certified Mail December 8, 2011.

2. The Defendant has failed to plead or otherwise, defend.

3. Default was entered against the Defendant by the Clerk January 30, 2012.

4. The Court having reviewed the Plaintiff's Complaint for Declaratory Judgment, the Affidavit of Neil Walker, First Vice-President of Plaintiff, First Financial Bank, and Bench Brief of Legal Authority, it is hereby ORDERED, ADJUDGED and DECREED that:

5. On June 13, 2006, Scott Johnson borrowed \$500,000.00 from First Financial Bank and mortgaged, as collateral, real property in Shelby County, Alabama abutting Highway 71 legally described as follows:



Begin at the NW corner of the NW 1/4 of the NE 1/4 of Section 2, Township 24 North, Range 15 East, said point being the point of beginning; thence S 0650'02" W along the west line of said 1/4 section, a distance of 2456.45 feet to the NW corner of the NW 1/4 of the SE 1/4 of said Section 2; thence S 0651'51" W along the West line of said 1/4 1/4 section, a distance of 1228.31 feet to the NW corner of the SW 1/4 of the SE 1/4 of said Section 2; thence S 0649'24" W along the West line of said 1/4 1/4 section, a distance of 1260.20 feet to the SW corner of the SW 1/4 of the SE 1/4; thence N 8630'33" E, along the South line of said 1/4 1/4 section, a distance of 1303.27 feet to the SE corner of the SW 1/4 of the SE 1/4 of said Section 2; thence N 0632'44" E along the East line of said 1/4 1/4 section, a distance of 613.13 feet; thence N 8646'34" E, a distance of 168.48 feet to the westerly right of way line of Shelby County Highway #71 (80 foot right of way); thence N 0611'50" E and along said ROW, a distance of 438.09 feet to a point of curve to the left having a radius of 5000.00 feet, a central angle of 0429'07" and subtended by a chord which bears N 0357'16" E, a chord distance of 391.32 feet; thence northerly along the arc and along said right of way, a distance of 391.42 feet; thence N 0142'43" E, and along said right of way, a distance of 1759.44 feet to a point of curve to the right having a radius of 1000.00 feet, a central angle of 3931'11" and subtended by a chord which bears N 2128'18" E, a chord distance of 676.16 feet; thence northerly along the arc and along said right of way, a distance of 689.75 feet; thence northwesterly along the shoreline of Lay Lake, a distance of 1800 feet more or less to the North line of said Section 2, said line being subtended by a chord which bears N 4012'03" W, a distance of 1327.78 feet; thence S 8801'31" W, along the North line of said Section 2, a distance of 467.71 feet to the point of beginning.

LESS AND EXCEPT:

Commence at the NW corner of the NE 1/4 of Fractional Section 2, Township 24 North, Range 1 East, Shelby County, Alabama; thence N 8801'31" E along the North line of said section, a distance of 462.64 feet; thence S 0158'29" E, a distance of 128.73 feet to the point of beginning, thence S 4143'57" W, a distance of 498.07 feet; thence S 4717'46" W, a distance of 50.24 feet; thence S 0650'02 W, a distance of 734.37 feet; thence S 8309'58" E, a distance of 844.22 feet; thence S 0142'43" W, a distance of 614.90 feet; thence S 8817'17" E, a distance of 236.03 feet; thence N 0142'43" E, a distance of 342.65 feet to a point of curve to the right having a radius of 1000.00 feet, a central angle of 3931'11" and subtended by a chord which bears N 2128'18" E, a chord distance of 676.16 feet; thence northerly along the arc a distance of 691.40 feet; thence northwesterly along the meanders of Lay Lake (Spring Creek), a distance of 1300 feet more or less, said meanders subtended by the

following described closure line; thence N 44°10'05" W, a distance of 1232.50 feet to the point of beginning.

The mortgage was recorded June 23, 2006 at 20060623000302110 in the Probate Court of Shelby County, Alabama.

6. On July 2, 2008, Scott Johnson executed an easement to himself that would provide an easement across the real property mortgaged to First Financial Bank to property owned by Johnson adjacent to the property mortgaged to First Financial Bank, as per easement recorded July 2, 2008 at 20080702000268690.

7. First Financial Bank did not enter into or consent to the easement executed by Johnson and recorded on July 2, 2008.

8. On July 29, 2008, First Financial Bank foreclosed the mortgage given by Johnson, as per mortgage foreclosure deed recorded July 29, 2008 at 20080729000305230 in the Probate Court of Shelby County, Alabama.

9. On October 4, 2006, Scott Johnson and wife, Tori Johnson, executed a mortgage on property adjacent to the property mortgaged to First Financial Bank to Bancorp South Bank, recorded at 20061012000506670; corrected by Scrivener's Affidavit recorded in Instrument No. 2007031500016980, in the Probate Court of Shelby County, Alabama, subsequently assigned to Countrywide Home Loans Servicing, LP at 20090428000154550.

10. On June 6, 2011, BAC Home Loan Servicing, LP, f/k/a Countrywide Home Loan Servicing, LP, foreclosed the October 4, 2006 mortgage from Johnson and his wife, Tori Johnson, as per mortgage foreclosure deed, recorded

June 30, 2011 at 20110630000189690 in the Probate Court of Shelby County, Alabama.

11. Fannie Mae a/k/a Federal National Mortgage Association was the purchaser of the property at foreclosure on June 6, 2011.

12. The easement that was executed and recorded by Johnson on July 2, 2008 would purportedly provide Johnson, and his successor in interest, Fannie Mae with access across First Financial's real property to the real property, now owned by Fannie Mae.

13. The purported July 2, 2008 easement crosses and separates the real property, consisting of approximately 103 acres, owned by First Financial Bank, subsequent to the foreclosure of its mortgage on July 29, 2008.

14. The real property now owned by Fannie Mae will not be landlocked if the Court grants First Financial Bank's relief because the property now owned by Fannie Mae abuts County Road 71.

15. Pursuant to Paragraph 2 of the June 13, 2006 mortgage executed by Scott Johnson to First Financial Bank, Scott Johnson conveyed the subject property to First Financial Bank.

16. Scott Johnson had no interest in the property that he conveyed to First Financial Bank by mortgage at the time that he executed and recorded an easement to himself July 2, 2008, recorded at 20080702000268690, because the grantor can only convey such interest in the property as he has. Alabama Historical Commission v. City of Birmingham, 769 So.2d (Ala.Civ.App.2000).

17. First Financial Bank did not consent to the July 2, 2008 easement that Johnson gave to himself, nor did it join in the easement. Foreclosure of First Financial's mortgage terminated any easement recorded after the mortgage. Alabama Historical Commission v. City of Birmingham, 769 So.2d (Ala.Civ.App.2000).

18. The purported July 2, 2008 easement by Scott Johnson across the property he mortgaged to First Financial Bank is void and a nullity because Johnson did not own the property at the time that he attempted the conveyance of the easement to himself.

19. As successor in interest to Scott Johnson, Fannie Mae a/k/a Federal National Mortgage Association, likewise, has no easement to cross the real property mortgaged by Johnson to First Financial Bank.

20. The Court finds, as a matter of law, that the "EASEMENT OR RIGHT-OF-WAY FOR ACCESS TO PROPERTY", as recorded at 20080702000268690 in the Probate Office of Shelby County, Alabama on July 2, 2008 is hereby declared void and a nullity.

21. A certified copy of this order is to be filed in the real property records of Shelby County so as to remove any cloud that the purported easement by Scott Johnson placed on Plaintiff's title. The copy of this Order, to be filed in the real property records, shall satisfy the Notice of Lis Pendens and Notice of Action Pending, as filed by the Plaintiff October 24, 2011 in the Office of the Judge of Probate of Shelby County, Alabama at 20111024000316900.

22. Court costs taxed to the Defendant, Fannie Mae a/k/a Federal
National Mortgage Association.

DONE AND ORDERED THIS ⁷⁴13 DAY OF FEBRUARY, 2012.

Hewitt
HEWITT L. CONWILL, CIRCUIT JUDGE

Certified a true and correct copy
Date: 2/14/12
Mary H. Harris *9K*
Mary H. Harris, Circuit Clerk
Shelby County, Alabama